

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA : 09-CR-405

-against- US District Court
Central Islip, NY
FREDERICK CELANI,
Defendant. : February 18, 2011
- - - - - X 11:40 am

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ARTHUR D. SPATT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

BENTON J. CAMPBELL
United States Attorney
One Pierrepont Plaza
Brooklyn, New York 11201
By: RICHARD LUNGER, ESQ.
United States Attorney

For the Defense:

FREDERICK CELANI, Pro Se
JAMES BRANDEN, ESQ.

Legal Advisor:

RICHARD A. MILLER, ESQ.

Court Reporter:

Dominick M. Tursi, CM, CSR
US District Courthouse
1180 Federal Plaza
Central Islip, New York 11722
(631) 712-6108 Fax: 712-6124
DomTursi@email.com

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1 (Call to Order of the Court.)

2 MR. LUNGER: Rick Lunger.

3 MR. MILLER: Richard Miller, legal advisor.

4 MR. LUNGER: With me at counsel table is Matthew
5 Galioto from the FBI.

6 MR. BRANDEN: Jim Branden here for Mr. Celani.
7 He is seated to my right.

8 THE COURT: Well, I received two letters from
9 Mr. Celani -- at least two letters -- in which he says he
10 wants you to withdraw.

11 Did you get that?

12 MR. BRANDEN: I was cc'd on of those letters,
13 judge. And I believe at this point that Mr. Celani and I
14 can no longer have an active attorney-client relationship.

15 Our communication has broken down. And from the
16 history of this case and from having spoken with him
17 previously, I believe that he should be permitted to
18 represent himself, which is his stated desire.

19 THE COURT: Any objection to that, Mr. Lunger?

20 MR. LUNGER: Your Honor, we think it is
21 important for there at least to be some sort of legal
22 advisor or standby counsel, however the court would phrase
23 it, to be involved in this case; particularly because, as
24 the court is aware, there has been voluminous discovery
25 produced in this case which consists of computer images

1 from at least approximately 11 computers, records of
2 victims that contain sensitive personal information.
3 Your.

4 Honor has issued a protective order which
5 directs defense counsel to keep this personal information
6 under lock and key. That prohibits it from going into the
7 jails.

8 So we believe, at least from a discovery
9 standpoint, there may be other reasons as well why standby
10 counsel or some sort of legal advisor should be appointed
11 here, but certainly from a discovery standpoint we believe
12 it is imperative to have a defense counsel present and
13 available to Mr. Celani, if for no other reason but to be
14 the custodian of this very sensitive victim information,
15 which the court has recognized is sensitive and has issued
16 a protective order governing the various uses of such
17 information.

18 MR. BRANDEN: Judge, I don't mean to cut off the
19 prosecutor, but Mr. Celani has indicated to me that he
20 understands the government's concern in this regard. As
21 long as he is his own lawyer, he does not object to having
22 standby counsel for those purposes.

23 THE COURT: Okay. We have had this situation,
24 Mr. Celani has indicated that he wanted to represent
25 himself.

1 You don't hear me, Mr. Celani? Do you want to
2 come up here?

3 THE DEFENDANT: Could I?

4 THE COURT: You are coming up with -- your
5 friends are coming up with you.

6 MR. BRANDEN: His ear plugs were broken apart
7 somehow during today's travel, I guess, so he has just put
8 them back together.

9 THE COURT: Mr. Celani, generally when a
10 defendant states that he or she wants to represent
11 themselves, I go into a long dissertation on why that is
12 the absolute wrong thing to do; that you are not an
13 attorney; that you are going to be talking to the jurors
14 personally, you being the one involved; and you are not
15 experienced in some of the nuances that take place in a
16 courtroom. It is just in my opinion a very, very damaging
17 thing for a defendant to do.

18 That is my opinion. I think I have expressed
19 this several times already.

20 THE DEFENDANT: Yes, sir, you have.

21 THE COURT: Notwithstanding that, you want to
22 represent yourself.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Well, I'm going to permit you to
25 withdraw, Mr. Branden, with the thanks of the court.

1 MR. BRANDEN: Thank you, judge.

2 THE COURT: Okay. Now I'm going to appoint a
3 legal advisor.

4 You are very, very fortunate, Mr. Celani,
5 because Richard Miller is not only an experienced criminal
6 defense lawyer, he is a nice guy.

7 THE DEFENDANT: Well, then, we will get along
8 fine. I'm a wonderful person.

9 THE COURT: You have this terrific combination,
10 so you are going to be very fortunate. If you have any
11 questions, you call and speak to Mr. Miller. He is very
12 observant. He comes to see you and things like that. So
13 you are very fortunate.

14 THE DEFENDANT: Just for the record, your Honor,
15 MCC is much easier to set up email contacts than calling
16 because I don't have funds to be calling.

17 MR. BRANDEN: You mean the MDC, where you are
18 presently?

19 THE DEFENDANT: Yes, the MDC. I forgot.

20 THE COURT: Okay. So here is where we are.
21 Mr. Branden is going to be excused, again with the thanks
22 of the court.

23 MR. BRANDEN: I appreciate it.

24 THE COURT: I really appreciate your help.

25 MR. BRANDEN: Certainly. Thank you, judge.

1 THE DEFENDANT: Your Honor, if I may. If I may
2 please.

3 The last time we were here, you ordered that
4 Mr. Neville turn over his file to Mr. Branden. That has
5 yet to occur.

6 THE COURT: That has not occurred?

7 THE DEFENDANT: No, sir.

8 MR. BRANDON: I will speak to that.

9 That has not occurred. And I received a phone
10 call from a lawyer that was working with Mr. Neville, not
11 me but some other lawyer, whom I do not know, who
12 indicated that he had documents that he wanted to forward
13 to me.

14 I called that person back more than one time,
15 and his phone is full of messages. We can't leave any
16 additional message. So still I have not received all of
17 the discovery. And I will talk with Mr. Miller about
18 that.

19 THE COURT: You want to make sure that is done
20 right away.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Miller.

23 MR. MILLER: Yes, sir.

24 THE COURT: Do you want to call Mr. Neville and
25 tell him I'm directing him to send all those papers over?

1 Do you want the papers, Mr. Celani?

2 THE DEFENDANT: Yes, sir.

3 And I have one other request, your Honor.

4 THE COURT: Sure.

5 THE DEFENDANT: It is a bit odd.

6 Mr. Neville hired a man named John Sorocco. He
7 is an attorney somewhere in Brooklyn. Apparently, he was
8 not going to act as an attorney in the case. I was told
9 he was going to be an investigator. And then
10 unfortunately the man had a mental breakdown and went into
11 an mental hospital, and all those documents I gave to him
12 have disappeared.

13 I would like someone to ask Mr. Neville to get
14 in touch with Mr. Sorocco or his family and get my
15 documents back.

16 THE COURT: Mr. Miller, would you take care of
17 that, please?

18 MR. MILLER: I will try to do my best, judge.

19 THE COURT: And let me know and let Mr. Lunger
20 know if we can help out.

21 MR. MILLER: All right, your Honor.

22 THE COURT: I want those papers delivered
23 immediately.

24 MR. LUNGER: Your Honor, just so I'm clear on
25 the record. The files and computer media that is

1 presently in Mr. Neville's custody is going to be turned
2 over to Mr. Miller. Is that correct?

3 THE COURT: No. To Mr. Celani.

4 MR. LUNGER: Your Honor, that would violate your
5 Honor's protective order.

6 Those documents have sensitive information that
7 is not to be permitted in the jail.

8 THE COURT: Did I sign such an order?

9 MR. LUNGER: You sure did, your Honor.

10 THE COURT: Do you have a copy of it there?

11 MR. LUNGER: Absolutely.

12 (There was a pause in the proceedings.)

13 THE COURT: You are familiar with this order,
14 Mr. Celani?

15 THE DEFENDANT: Yes, sir, I am.

16 THE COURT: According to this order, which I
17 signed on October 16, 2009, defense counsel may receive
18 and inspect all discovery material subject to the terms
19 and conditions of this order.

20 And then it goes on to say that all discovery
21 materials received by defense counsel shall be stored in
22 defense counsel's office, in a locked room, and shall be
23 shredded by defense counsel upon the conclusion of this
24 case and any appeals; that all these records must be
25 stored at defense counsel's office in a locked room and/or

1 on one or more computers that are not connected to the
2 internet.

3 The order also provides that defense counsel
4 shall provide the United States with the name, address,
5 Social Security number and date of birth of any civilian
6 expert or paralegal that the defense wishes to have access
7 to the discovery material, 14 days before giving such
8 individual access.

9 MR. MILLER: Your Honor, I have to say I'm not
10 familiar with this case yet and I don't honestly know if I
11 think that is appropriate.

12 THE COURT: Well, I have signed this order.

13 You may have to make a motion to vacate it,
14 then. I signed this order and it says:

15 *Inspection by the defendant. Defendant may*
16 *review discovery materials solely for the purpose of*
17 *assisting defense counsel. Defendant may take notes while*
18 *reviewing discovery materials only in the presence of*
19 *defense counsel at the USAO or the Metropolitan Detention*
20 *Center. And all notes taken by the defendant in the*
21 *presence of defense counsel must be relinquished to*
22 *defense counsel prior to leaving the MDC.*

23 MR. MILLER: May I have a moment, your Honor?

24 THE COURT: Yes.

25 (Mr. Miller and defendant confer.)

1 MR. MILLER: Thank you, your Honor.

2 THE COURT: Incidentally, Mr. Miller, this order
3 was signed by Mr. Lunger, by James Neville, by the
4 defendant, Frederick Celani, and then so ordered by me.

5 MR. MILLER: I see.

6 THE COURT: It was all agreed upon.

7 MR. MILLER: It is very much out of the
8 ordinary, your Honor.

9 THE COURT: It is.

10 And it says further:

11 *In no event shall the defendant, defense*
12 *counsel, paralegal or civil experts disclose or describe*
13 *any of the personal information to any other person other*
14 *than the government.*

15 I think you ought to give a copy of this to
16 Mr. Miller.

17 MR. MILLER: Thank you, sir.

18 MR. LUNGER: I just did, your Honor.

19 THE COURT: If you think that this order is
20 improper, illegal, unwise or for any other reason you can
21 move --

22 MR. MILLER: Yes, your Honor. I appreciate
23 that.

24 THE COURT: -- to vacate portions of the order.

25 MR. BRANDEN: I appreciate that. Thank you.

1 THE COURT: But right now this order is it.

2 MR. MILLER: All right.

3 THE COURT: Signed by the defendant.

4 MR. MILLER: Well, I hope he knew what he was
5 doing. I will take it, I will review it, and speak to my
6 client about it and we will figure out what to do.

7 THE COURT: Okay.

8 THE DEFENDANT: Your Honor, if I may.

9 When that order was signed, if you recall, the
10 theory was that we were going to be coming, I don't know
11 if it was here or someplace else, and Neville was going to
12 be there and we were going to review all these documents.

13 On one occasion we came to the US Attorneys
14 office, I don't know if it is downstairs or upstairs,
15 somewhere in this building. We never did look at those
16 disks. And to this day I have never laid eyes on them. I
17 have never seen any discovery in this case.

18 Furthermore, the way Neville explained it to me
19 was, whatever the big secret is that Mr. Lunger has was
20 going to be bifurcated from the rest of the material. So
21 anything I signed, I signed under Neville's stipulation to
22 me as to what it was going to be.

23 At that particular time I didn't even have
24 hearing aids. I didn't even know what was going on in
25 this room.

1 So I would object to anyone who would say that I
2 agreed to this. I basically did what counsel told me to
3 do.

4 THE COURT: Well, you can talk to Mr. Miller
5 about that and he can incorporate, if he so desires, that
6 into part of the motion.

7 THE DEFENDANT: Thank you, your Honor.

8 MR. LUNGER: Your Honor, just by way --

9 THE COURT: You have never received discovery.

10 MR. LUNGER: That is not true, your Honor.

11 What Mr. Neville showed to this defendant I
12 can't speak to because it is attorney-client privileged
13 information. I'm not privy to what discovery Mr. Neville
14 may or may not have shown this defendant. But all of the
15 discovery to date has been turned over to counsel.

16 The protective order is simply -- it is not to
17 prevent access to information by the defendant. The
18 defendant, as your Honor read, can review the discovery
19 material, both written on paper and also computer
20 material. What the protective order is meant to do is to
21 make sure that sensitive information doesn't make its way
22 into the jail.

23 We have victims who have turned over -- during
24 the course of this scheme there were over 100 victims who
25 provided sensitive information, like Social Security

1 numbers, home addresses, computer passwords, and the like.
2 That cannot get into the jails, your Honor. We have an
3 obligation to the victims.

4 Mr. Neville agreed to the protective order
5 because he understood, like I do, that that information is
6 not -- it is not proper to be in a jail. It doesn't
7 further the defense in any way for victim number one to
8 have his or her Social Security number and date of birth
9 in the possession of this defendant or any other inmate at
10 the MDC.

11 In terms of access to discovery, all of the
12 discovery has been produced pursuant to this order. None
13 of it has been redacted, none of it has been sanitized,
14 because there has always been a defense counsel in place
15 to take custody of it and make sure that it is not used in
16 an improper way.

17 THE COURT: Apparently, Mr. Neville hasn't
18 turned over the discovery so we want to get that done
19 immediately.

20 And I want to know about that, Mr. Miller.

21 MR. MILLER: Yes, sir. I understand.

22 THE COURT: If necessary I will communicate with
23 Mr. Neville. I would prefer not to do that.

24 MR. MILLER: Thank you. I appreciate that, your
25 Honor.

1 THE COURT: So where are we now?

2 MR. LUNGER: Yes, your Honor.

3 We are in the process of preparing a superseding
4 indictment to present to the grand jury. We were hoping
5 we would have the indictment returned by today and that
6 the defendant could be arraigned on it today.

7 In the course of our preparation, about two
8 weeks ago we realized that there were some documents we
9 subpoenaed that we never received. We have since received
10 those documents. In fact we received them today. We are
11 going to review them, they are not voluminous, and we hope
12 to supersede the indictment to add an additional scheme,
13 probably next month.

14 In the interim I have given a proposed plea
15 agreement to Mr. Neville to deliver to, now Mr. Celani who
16 is representing himself, and that plea agreement would
17 provide coverage not only with respect to the present
18 indictment but with respect to any charge that we would be
19 bringing under the superseding indictment as well.

20 The plea agreement is open, will remain open,
21 until March 4.

22 THE COURT: Have you received the plea
23 agreement, Mr. Celani?

24 THE DEFENDANT: No, your Honor. And of course I
25 question the fact why he gave it to Mr. Neville when he

1 knew two months ago --

2 MR. LUNGER: I'm sorry. I meant to say
3 Mr. Branden.

4 THE COURT: Mr. Brandon, do you have that?

5 MR. BRANDEN: I just got it this morning.

6 THE COURT: Do you want to give it to the
7 defendant.

8 MR. LUNGER: I'm sorry, your Honor. I misspoke.
9 Mr. Branden.

10 THE COURT: We are using the doctrine of
11 self-help here.

12 Okay. You have the proposed plea agreement?

13 THE DEFENDANT: Yes, sir. I didn't request it.
14 I have no interest in it.

15 THE COURT: You have no interest in it.

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay.

18 MR. LUNGER: That's fine. I would just like the
19 record to reflect that it was turned over.

20 MR. MILLER: I will discuss the plea agreement
21 with my client, and obviously he can decide what he wishes
22 to do with it, your Honor.

23 THE COURT: Of course. That is still up to him.
24 There will be no pressure put on him at any time. No
25 pressure to plead or anything like that.

1 Do you understand that?

2 THE DEFENDANT: Yes, I do, your Honor. But I
3 have one comment to make I want to put on the record.

4 The Second Circuit recognizes that in cases like
5 this, where the defendant represents themselves, that
6 standby counsel cannot enter into any type of motion on
7 behalf of the defendant. A standby counsel is there to
8 advise the defendant. And I want to make sure that
9 anything that is done is done by me, personally.

10 THE COURT: You are right.

11 THE DEFENDANT: Thank you.

12 THE COURT: Because you are now representing
13 yourself.

14 You finally got your way, Mr. Celani.

15 THE DEFENDANT: Thank you, your Honor. I
16 appreciate it.

17 THE COURT: Despite my protestations about four
18 times.

19 THE DEFENDANT: Thank you, sir.

20 THE COURT: Okay. Anything else at this time?

21 How much time do we want to put this over?

22 Let's do it after the superseding indictment.

23 MR. LUNGER: Yes, your Honor.

24 The next date that was proposed was April 15 so
25 that we feel that that is a status conference date, that

1 is probably a reasonable one. I think there is a fair
2 chance that Mr. Celani will be arraigned on the
3 superseding indictment before April 15 but at least that
4 is a control date.

5 THE COURT: Mr. Celani, is that date acceptable
6 to you?

7 THE DEFENDANT: Yes, sir. It is fine.

8 THE COURT: Okay. Do you understand about
9 waiving speedy trial?

10 THE DEFENDANT: Yes. I waive the speedy trial
11 and I'm ready to proceed to the 15th.

12 THE COURT: Have you signed the waiver form?

13 THE DEFENDANT: No, but now I will.

14 MR. MILLER: I find it a little bit difficult
15 being standby counsel. Your Honor expects that I will do
16 my best to talk to my client and review all the issues in
17 the case. But does that mean that I am not responsible
18 for filing motions? Because he is going to file by
19 himself.

20 THE COURT: That is up to Mr. Celani. If he
21 wants to file motions, he will file the motions himself.
22 He is pro se. He is representing himself. I think the
23 wise thing would be to permit you to file the motions but
24 this is up to him.

25 THE DEFENDANT: Your Honor, we are in a question

1 here of semantics. When you say file the motions, do you
2 mean literally type them and send them in? Or do you mean
3 write them and author them?

4 THE COURT: Both.

5 THE DEFENDANT: I want to write and author my
6 own motions.

7 As far as standby counsel processing them,
8 because I don't want to be sending in a bunch of things
9 that are handwritten, if he is going to process them and
10 file them by Pacer, that is fine with me.

11 THE COURT: Okay. Then you will work it out
12 with Mr. Miller.

13 THE DEFENDANT: Yes.

14 MR. MILLER: We will work it out, Judge.

15 THE COURT: Okay. Do you have the waiver of
16 speedy trial form?

17 Let the record indicate that the defendant and
18 his standby counsel and the prosecutor have signed the
19 waiver of speedy trial form. And I am signing an order
20 excluding the time between today, February 18, 2011,
21 until -- what is it? April 15?

22 MR. LUNGER: Yes, your Honor.

23 THE COURT: April 15.

24 I'm inserting that date in here. Is that all
25 right with you, Mr. Celani?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you want to take a look at it?

3 THE DEFENDANT: No.

4 THE COURT: Is that all right with you,
5 Mr. Miller?

6 MR. MILLER: It is, your Honor.

7 THE COURT: Mr. Lunger?

8 MR. LUNGER: Yes, your Honor.

9 THE COURT: Okay. I am signing this order, with
10 the consent of the defendant, in the interest of justice,
11 and in the public interest.

12 There are many things that have to be done yet
13 in this case. If not before, we will see you on April 15.

14 I would like to again thank Mr. Branden for all
15 his good work. I really appreciate it.

16 MR. BRANDEN: Thank you, Judge.

17 THE COURT: You were fortunate to have him. I
18 know you may not agree with me but I'm telling you.

19 And you are very fortunate to have Richard
20 Miller. And I want to thank you very much for undertaking
21 this matter.

22 MR. MILLER: Yes, sir.

23 THE COURT: Okay. April 15.

24 MR. MILLER: Have a good day, your Honor.

25 (Proceedings adjourned at 12:15 pm.)